IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO: P. 939 OF 2001

IN PROBATE AND ADMINSTRATION

IN THE ESTATE OF DAVID CHRISTOPHER STANLEY
ALSO KNOWN AS CHRISTOPHER DAVID STANLEY

BETWEEN	**MICHELE KNIGHT STANLEY**	**CLAIMANT**
AND	**CHRISHENE STANLEY**	**1st DEFENDANT**
AND	**CHRISTOPHER STANLEY JNR.**	**2nd DEFENDANT**
AND	**BERNICE LATIMERE STANLEY**	**3rd DEFENDANT**

Heard On June 30, and July 5, 2004

ANDERSON, J.

In this interesting case, both the claimant and the third defendant claim to be "widows" of the deceased, a late musician of some repute. The first and second defendants are the children of the deceased, the first being the child of the third defendant.

This is an application by the Defendants, for an order that the claimant's statement of case in the instant matter be struck out pursuant to CPR 26.3 (1) (b), as being an abuse of the process of the Court.

The claimant who claims to be the Executrix of named in what purports to be the last will of the deceased by her writ and amended statement of claim sought to prove the will in solemn form. The grounds upon which the order to strike out was being sought were:

1. That the issue of the testamentary capacity of the Deceased at the time of making the will on May 29, 1998 was litigated and determined against the Claimant by the Probate Court in Dekalb County, Georgia, USA on October 31, 2003 relating to a will purporting to be the Last Will and Testament of the Deceased and virtually identical in all respects to the present Will save for the first page.
2. That the Claimant is bound by that decision and is estopped from re-opening that issue in these or any other judicial proceedings save by way of appeal.

3. That the Claimant's appeal in the Supreme Court of Georgia was dismissed on the 27th day of April 2004.
4. Pursuant to Rule 26.3 (1) (b) and (c).

According to the affidavit of Mrs. Busby-Earle, the claimant had filed a petition in the Georgia Probate Court in Dekalb County seeking to prove "what she then purported to be the Last Will and Testament of the Deceased in solemn form". She says that that application was contested by the defendants herein and the matter was tried in that court on September 8 and 9, 2003. By its ruling on October 31, 2003, the claimant's petition was denied. An appeal to the Georgia Supreme Court led to the judgment of the Probate Court in Dekalb County being upheld.

The affidavit also provided evidence to the Court that on July 27, 2001 when it granted temporary letters of administration to the First Defendant, the said Georgia Court had found that the deceased died "domiciled in this (Dekalb) County". Further, in its October 31, 2003 ruling, the Court found as matter of law, based upon the evidence before it, that the Deceased at the time of the purported execution of the will on May 19, 1998 did not have testamentary capacity, and accordingly, the will was invalid. The aforesaid affidavit also exhibited a copy of an order by the said Georgia Court in which it was declared, *inter alia*, that the 1st and 2nd defendants were "legitimate children" of the deceased; that the third defendant was the "surviving common-law-wife" of the deceased, and that "the attempted marriage ceremony on October 15, 1993 between Michelle Knight and David Christopher Stanley is hereby declared null and void". It then cites relevant Georgia statutes and case law in support of its decision.

It was submitted that the claimant was estopped from proceeding on her application to prove the will of the deceased in solemn form since the matter was the subject of *res judicata* or cause of action estoppel.

> "The Rule of estoppel by res judicata, which is a rule of evidence, is that where a final decision has been pronounced by a judicial tribunal of competent jurisdiction over the parties to and subject matter of the litigation, any party or privy to such litigation as against any other party or

privy is estopped in any subsequent litigation from disputing or questioning such decision on merits".
{Per Lord Guest in Carl Zeiss Stiftung v Rayner & Keeler Ltd (No: 2) [1967] A.C. 853 at 933, (quoting "Spencer Bower on Res Judicata, p 3.)}

According to Cheshire & North, Private International law, 11th Edition:

> "Estoppel per rem judicatam is a generic term which comprises two species. The first, called *cause of action estoppel*, "is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or the existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties".[1] In such a case, a further action for the same cause can never succeed.
> The second species, called *issue estoppel*, becomes relevant where the determination of a cause of action has necessitated the determination of a number of different issues. In the case of an English judgment, the rule then is that the parties to an action are estopped from contesting a particular issue which has already been determined in previous proceedings to which they were also parties. It is immaterial that the cause of action is not the same in both proceedings".

As in cause of action estoppel, in issue estoppel, there are three prerequisites.

1) First, the previous decision must have been final and conclusive on the merits, and must have been given by a court of competent jurisdiction.
2) There must be identity of parties, that is to say, the parties to the previous decision or their privies must be the same persons as the parties to the later action or their privies.
3) The cause of action or issue before the court must be identical with that previously determined.

Courts in England have determined that when applying these common rules, there is an important distinction for with respect to issue estoppel, there is a need for caution. There may be good reasons for issues which arise in the second proceedings not to have been considered, or considered fully, in the first; the difficulty of determining exactly what were the issues canvassed in the foreign court; the trivial nature of the particular issue;

[1] Thoday v Thoday [1964] P. 181 at 197

impracticability in terms of time or expense. It should be noted that in The Sennar (No 2)[2] it was decided that issue estoppel was applicable in English Courts in respect of foreign decisions.

Ms. Stanley in her submissions picked up on the cautions given in the Carl Zeiss case. As I understand her submissions for the claimant, she was of the view that there were "triable issues" which had not been determined by the Georgia Court. I also understood her to question whether some of the "findings" were obiter rather than decisions of the court. She also suggested that the issue of the jurisdiction of the Georgia Court was not settled. There is, however, no pleading that that court did not have jurisdiction. In any event, in identifying these issues, it seems to me that they do not come within the terms of the cautions of the Carl Zeiss case. In that regard, neither the affidavit of Alex Wizzard nor that of the claimant provides any evidence that there are any issues which are relevant here which were not the subject of consideration by the Georgia Court.

It is trite law that a foreign judgment is not impeachable on its merits. The Georgia Court made certain important findings of fact. It found that the deceased was domiciled in Georgia. That finding is in my view not reviewable by this court as it does not fall within any of the recognized exceptions upon the basis of which a party may still escape liability. These include:

a) Fraud;
b) Contrary to public policy;
c) Foreign Penal or Revenue Laws;
d) Contrary to natural justice;
e) Matter previously determined by domestic court.

None of these exceptions is pleaded in response to the application. In particular, there is no allegation of fraud in response to the application. The Georgia Court also found that the testator had no capacity to make a will, a matter which it seems to me to be peculiarly

[2] [1985] 1 WLR 490

within the competence of the court of domicile. It seems to me that to allow the action to continue would be an abuse within the meaning of CPR 26.3 (1) (b).

I accordingly grant the application to strike out the claimant's statement of claim/case. It seems to follow naturally, that the second part of the application which seeks judgment on "paragraphs 1, 2, and 3 of the amended counterclaim", but which it seems really refers to sub-paragraphs (a) (b) and (c) of paragraph 2 of the amended counterclaim, must also be granted subject to an appropriate amendment to the application being made.

Costs to the defendants to be agreed or taxed.

Leave to appeal granted. Execution of judgment stayed for three weeks